IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.4200 OF 2006
IN
CIVIL APPLICATION NO.5860 OF 2005
IN
FIRST APPEAL NO.2359 OF 2005

Smt.Geeta Arjun Kachare & Ors. ..Applicants.

V/s.

New India Assurance Co.Ltd. & Ors..Respondents.

WITH

CIVIL APPLICATION NO.4201 OF 2006
IN
CIVIL APPLICATION NO.5944 OF 2005
IN
FIRST APPEAL NO.2412 OF 2005

Smt.Mangal Shrirang Patil & Ors. ..Applicants.

V/s.

New India Assurance Co.Ltd. & Ors..Respondents.

Mr.Anilkumar Patil for applicants.

Mr.S.M.Vidyarthi for Respondent-Insurance Co.

Mr.V.B.Rajure for respondent No.8.

CORAM: A.M.KHANWILKAR,J

DATE : OCTOBER 18, 2006.

P.C. :

1. Heard counsel for the parties.

2. By this application, applicants/original respondents assert that inspite of best efforts, the

applicants were unable to procure bank guarantee so as to avail of the interim order passed by this Court regarding withdrawal of 50% of the amount deposited in the Lower Court. The cause mentioned in the application about the inability to organise for bank guarantee, stated by the applicants seems to be genuine one. The fact remains that the applicants are inclined to offer security commensurate with the amount to be withdrawn by them in terms of order dated 2nd March, 2006.

3. Counsel for the Insurance Company however, opposes this prayer and in turn, has relied on the order passed by the Division Bench of this Court dated 13th June, 2006 in First Appeal No.1371 of 2006 Civil Application No.2710 of 2006 to contend that in fact the Division Bench of this Court in such a fact situation granted absolute stay in favour of the Insurance Company without requiring insurance company to make any deposit. In such situation it would be inappropriate to allow the claimants to withdraw the amount already deposited by them by furnishing only security instead of bank guarantee.

4. This argument cannot be countenanced for more than one reason. First reason is that, the order

passed in the First Appeal No. 2412 of 2005 and companion matters by me on 2nd March, 2006 was founded on the decision of the Supreme Court reported in **JT 2000 Supply.(1) SC 207** in the case of **Oriental Insurance Company Ltd. Vs. M.S.Laxmishah and Ors.** The order passed by me on 2nd March, 2006 is allowed to become final. In the circumstances, Insurance Company cannot be heard to say that they are not liable to make any deposit relying on the order passed by the Division Bench of this Court as referred above. It is rightly pointed out by Mr. Rajure, counsel for the respondent No.8, by submitting that in the matter before Supreme Court in the case of **Oriental Insurance Company Ltd.(Supra),** the Court permitted the claimants to withdraw the amount on furnishing bank guarantee by a nationalised bank or "furnishing security" to the extent of the amount to be withdrawn to the satisfaction of the registrar. In the circumstances, there is no difficulty in accepting the request of the applicants/claimants to permit them to withdraw 50% of the amount deposited by the appellant-Insurance Company by furnishing appropriate security commensurate with the amount to be withdrawn to the satisfaction of the Registrar of the trial Court.

5. Applications are allowed on the above terms. Ordered accordingly.